IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9024 of 2007

Date of decision: 13.11.2007

Raj Rani and another

..... Petitioners

Versus

Oriental Bank of Commerce

.....Respondent

Coram: Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Ajay Kumar Mittal

Present: Mr. Sudeep Mahajan, Advocate,
for the petitioners.

Mr. P.K.Dutt, Advocate,
for the respondent-Bank.

***

M.M.Kumar, J.

The issue raised in this petition filed under Article 226 of the Consitution is, whether the period of limitation prescribed by the Limitation Act, 1963 would apply as provided by Section 36 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interst Act, 2002 (for brevity 'the Act').

We have already taken a view while deciding CWP No. 6959 of 2007 on 01.10.2007 (M/s Varun Steels vs. Canara Bank) that the action would not be barred by limitation when the proceedings initiated before the Debts Recovery Tribunal were within the period prescribed by the Limitation Act. That apart, in the present case, the loan was availed on 23.10.1999 (P-10) and notice under Section 13 (2) of the Act was given on 28.04.2003. It is undisputed that the loan has been secured by mortgaging the property in question as is evident from the loan application (P-7). Once the loan has been secured by mortgage or by creating a charge on immovable property in question, the provisions of Article 62 of the Schedule appended to the Limitation Act, 1963 would apply which

provides a period of 12 years from the date when the money becomes due. The respondent-Bank had issued notice under Section 13 (2) of the Act in April, 2003, which is less than four years. It is thus obvious that action even otherwise does not attract the bar of limitation. Therefore, the argument raised is liable to be rejected. Even on facts, it has to be held that the action does not suffer from the bar of limitation provided by Section 36 of the Act.

In view of the above, the writ petition fails and the same is dismissed. However, the petitioner shall be at liberty to avail any other remedy in accordance with law.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 13, 2007
pj